Minority Language Rights

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MINORITY LANGUAGE RIGHTS

Pádraig Ó Riagáin and Niamh Nic Shuibhne

INTRODUCTION

Contests over human rights as claims or entitlements to state assistance are now a major, if relatively recent, feature of the socio-political processes and institutions of modern societies (Turner 1993). Within this wider debate about human rights, the subject of minority rights has long been of concern (Dinstein and Tabory 1992, Sigler 1983). A widely held, but not unanimous, view has emerged which argues that minorities have group or collective rights which cannot be reduced to their human rights as individuals. Linguistic and cultural rights are seen by many scholars as two such overlapping dimensions of collective minority rights (de Varennes 1996, Kymlicka 1995a, Phillipson and Skutnabb-Kangas 1995). In a world of multicultural and multilingual states, so the argument runs, these collective rights can only be guaranteed by the active involvement of states in the implementation of policies which support linguistic and cultural rights, just as in the case of more universally recognized and accepted social and economic rights (Stavenhagen 1990).

The concern here, of course, is with the specific issue of minority language rights. Although arguments continue at theoretical and ideological levels, there has been a proliferation of treaties, declarations, and other instruments in the last few years, at both the national and international level, which have recognized in one way or another human rights that pertain to minority languages. Among the very recent documents cited by de Varennes (1996) are the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (1992); the draft UN Declaration on the Rights of Indigenous Peoples (1991); the Document of the Copenhagen Meeting of the Conference on the Human Dimension (1990); and The European Charter for Regional and Minority Languages (1992). Gromacki (1992) claims that one third of the world's constitutions offer some protection for minority languages and de Varennes (1996) was able to assemble relevant extracts from some 143 national constitutions.

Conceptually, the question of minority language rights can be located within the classic debates about the balancing of liberal freedom with the demands of a capitalist economy, of equity and efficiency. When a substantial minority of a population is denied full effective citizenship because of the language they speak, then language and language rights matter. The debate about minority language rights thus touches upon a range of other political controversies concerning multiculturalism (Kymlicka 1995b), difference (Young 1990), recognition (Habermas 1993, Taylor 1992), presence (Phillips 1995), and citizenship (Kymlicka 1995b, Spinner 1994). But language rights issues also arise from the way in which language distributions serve to structure societies. It may be the case that the different experiences and structural positions of minority language groups militate against their full access to language rights—even when they exist in law. The relevant perspectives here include those of social and economic development (European Commission 1996, Stavenhagen 1990), political economy (Gal 1989, Heller 1995), sociology (Bourdieu 1991, Williams 1992), and language planning (Fishman 1991, Weinstein 1990).

Quite obviously, although it is important to keep this wider theoretical and political context in mind, it will be impossible for us to review recent publications across such an agenda. In this survey of the literature, we restrict ourselves to five issues which figure most prominently in the literature about minority language rights: the definition of minorities, individual versus collective rights, the legal bases for minority linguistic rights, applications and interpretations of minority language rights, and assessments of the impact of rights legislation. Throughout, and particularly in the annotated bibliography, we focus primarily on research published since about 1990.

DEFINITION OF MINORITIES

1. The definition argument

Despite increasing interest in and debate on minority rights, there is no generally accepted definition of the term 'minority' (Andrysek 1989). The definition most widely referred to is that adopted by Capotorti as Special Rapporteur for the United Nations: a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members—being nationals of the state—possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion, or language (Capotorti 1979). Many commentators tend to adopt this definition as a starting point, modifying what they deem to be its restrictive elements (Packer 1993, Sigler 1983, Thornberry 1991). Most criticisms focus on the substantive content of the definition and are discussed below. Theorists further question the very need for a standard definition (Capotorti 1979). Packer (1993) and Gilbert (1996) introduce an additional dimension to the definition argument, challenging the use of adjectives such as 'ethnic' or 'linguistic' with respect to minority rights.

2. Objective and subjective criteria

The definition debate focuses mainly on two distinct issues. The first involves the use of objective criteria for the classification of minorities, including 1) the existence of distinguishing characteristics (such as speaking a distinct language), 2) the numerical size of the group, 3) the existence of a non-dominant position in relation to the rest of the population, and 4) the requirement that members of the minority group be nationals of the state in question. The first criterion—distinguishing characteristics—is never questioned. Although not ostensibly controversial, the numerical aspect has engendered some comment. It has been noted that this factor excludes 'factual' minorities (non-dominant majorities) such as women or Blacks under the former apartheid regime in South Africa (Gilbert 1996, Sigler 1983). Green (1987) accepts the moral significance of numerical size, but also introduces the notion of the relative power of the minority group. This argument is connected to the third objective criterion, that of non-dominant position, which purposely excludes the possibility that a dominant minority could rely on minority rights to entrench their position. Finally, criticism has been directed at the condition that members of a minority should be nationals of the state in question, since it excludes from protection immigrants and refugees (Sigler 1983).

The second major definitional issue focuses on subjective criteria such as the will of the members of the minority group themselves to preserve their distinguishing characteristics. Implicit solidarity is acceptable in this context (Capotorti 1979). The degree of importance that should be attached to this sense of solidarity has, however, been called into question (Gilbert 1996, Thornberry 1991). In politically pressurized situations, the possibility of oppressive governments and forced assimilation must always be borne in mind.

3. Definitions: Is agreement possible?

Capotorti (1979) stipulated that he drew on both objective and subjective criteria to formulate his proposed definition of a minority: Most of these aspects have, however, generated criticism. How, then, can the study and application of minority rights progress without a solid conceptual foundation? Capotorti (1979) observes that the absence of an accepted definition has never prevented the initiation and application of international instruments relevant to minority rights. Furthermore, it can be argued that most minority situations tend to be examined on their own individual merits. But while it is certainly true that different problems require different solutions, the absence of a definition could prove problematic. Gilbert (1996) notes that rights cannot be accorded to abstract entities. Thornberry (1991) remarks that since organizations such as the United Nations tend to apply international standards over national ones, the lack of definition at the international level is therefore accentuated. Perhaps even more disturbing, however, is the implicit indication of an underlying sense of uncertainty, even indifference.

INDIVIDUAL RIGHTS VERSUS COLLECTIVE RIGHTS

1. Individual rights

Traditionally, human rights have been conferred on individual human beings, with limited exceptions, such as the right of peoples to self-determination. In accordance with this 'individual' principle, minority rights have been granted to the members of the minority group rather than to the group itself. This has certainly been the approach adopted by the United Nations as manifested by Article 27 of the International Covenant on Civil and Political Rights (ICCPR) (...persons belonging to such minorities shall not be denied the right...). Some commentators have, however, suggested that the phrase, "in community with the other members of their group" (Article 27), indicates a hybrid of individual/group rights (Crawford 1992).

The fundamental justification for restricting the application of minority rights to individuals is that of avoiding the 'institutionalization' of minorities: This means that every individual should have a choice as to whether or not he/she wishes to remain a part of the minority or to assimilate into the majority population. Second, it has been suggested that the term 'individual' is more easily definable than 'minority' (Capotorti 1979). Finally, some American commentators argue that the introduction of group rights would facilitate the promotion of group diversity, leading to the fragmentation and disintegration of American society (Anon. 1992, Lowrey 1992). Additional arguments against group rights include the financial burdens on states and potential discrimination against the majority population (Triggs 1992).

2. Collective rights

Substantive criticism of the individual rights thesis has emerged in recent years (Baker 1994). Freeman (1995) points out that the problem is not focused on 'collective' rights as such, since associations and corporations are deemed to have both moral and legal rights and duties, but rather on the idea of collective 'human' rights.

Gilbert (1996) notes that the original system of protection for minority rights—the Minorities Treaties under the League of Nations—conferred rights on individuals in theory, but in practice the right of petition was extended to the group itself, thus illustrating an awareness that the group must also be accorded protection. Theorists now challenge directly the traditional assumption that group rights would automatically be taken care of as the result of the protection of individual rights (Brownlie 1992, Krag and Yukheva 1991). The fundamental argument is that individual rights exclude the recognition of affirmative action policies to ensure that a minority group can maintain its distinct characteristics (Brownlie 1992, Sigler 1983). Commentators argue that affirmative-action measures must be implemented in order to ensure factual as well as legal equality—this concept is further discussed below.

A number of complementary arguments have also been raised in favor of group rights. Freeman (1995) observes that only the interests of collectivities can generate sufficient weight to justify the existence of state responsibility. Green (1987) challenges the traditional assumption that granting group rights would lead to claims for independence and secession. He argues that such claims are generally related to the perceived unfairness of existing regimes and that the introduction of satisfactory and effective group rights would therefore weaken any claims for independence. Arington (1991) introduces a subtle yet challenging aspect to the debate. His study on the introduction of English-only laws in some American states shows how the democratic process can actually work against minority groups: The vast majority of English-only laws have been introduced as a result of the initiative and referendum procedures, illustrating that the democratic will of the majority can adversely affect vulnerable minority groups which do not have collective rights.

3. Resolving the conflicts between individual and collective rights

Theorists are gradually moving away from the debate on individual/group rights and focusing instead on a reconciliation between the two concepts (Brownlie 1992, Triggs 1992). Freeman (1995) argues that the general acceptance of affirmative-action policy—an inherently 'group' concept—indicates that group rights are recognized by states and international organizations to a greater extent than is generally realized. Certainly, contemporary writings favor at least some degree of group rights. Krag and Yukhneva (1991) stress the value of compromise, arguing that group rights should not be denied routinely in favor of individual rights and vice versa, but that all relevant circumstances should instead be examined and weighed. On a positive note, Triggs (1992) observes succinctly that the main objections raised to group rights now were once expressed with respect to *any* development of international human rights law in general.

In an interesting development of the argument, Green (1994) argues that minority groups are rarely homogeneous and that they often contain other, 'internal,' minorities within. Thus, he argues that minority rights are more dense than they appear. People have rights as members of a minority group, but members of the minority have rights as individuals *and* sometimes also as members of an internal minority.

LEGAL BASES FOR MINORITY LINGUISTIC RIGHTS

1. Historical background

Virtually all writings dealing with minority rights outline the historical background to their international protection (e.g., Capotorti 1979, Lerner 1991, Robertson and Merrills 1992, Sigler 1983, Thornberry 1991). In fact, the protection of minorities formed a substantive element of the development of general human rights law, along with humanitarian intervention and the abolition of slavery. The protection of minorities originated from growing respect for religious freedom, initially based on tolerance but evolving into respect and eventually protection

(Capotorti 1979). The onset of nationalism in the nineteenth century awakened the realization that other minority groups existed within the nation-state structure, in particular ethnic and linguistic minorities, thus ensuring their inclusion into the League of Nations Minorities Treaties system (Lerner 1991, Robertson and Merrills 1992). The initial focus of the United Nations on the rights of the individual meant that minority rights were no longer a prominent issue on the international agenda (Sigler 1983), but the inclusion of Article 27 into the ICCPR (International Covenant on Civil and Political Rights) and the commissioning of the Capotorti Report are illustrative of an awareness by the UN that minority rights do matter. Traditionally, language rights were seen as an element of ethnicity and race, but, while this connection is still valid, the independent character of linguistic rights is also recognised.

Gromacki (1992) argues that the adoption by the United Nations (in 1992) of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities confirms the fundamental nature of linguistic rights. But can the historical connections between human rights and minority rights be deemed sufficient to justify the continued and future protection of minority linguistic rights? Can linguistic rights be regarded as fundamental human rights? If so, do they merit separate existence or are they instead a sub-set of other fundamental rights? What implementation measures do they require? The following sections attempt to outline the conclusions reached by the writers surveyed.

2. Language rights as human rights

Under the League of Nations Minorities Treaties system, it was intended that a right to speak a particular language, generally a mother tongue, should be created irrespective of whether or not an individual understood the official language of the state, irrespective of the costs to the state (Gromacki 1992). But subsequent international instruments, such as the European Convention on Human Rights (Council of Europe), limit the introduction of an interpreter in criminal proceedings, for example, to situations where the accused does not understand the language of the proceedings. Should language rights thus be more correctly regarded as legal rights or claims rather than fundamental human rights?

Green (1987) and Piatt (1986) examine this issue, outlining the principle that a legal right may be regarded as a fundamental right if it can be said that the legal right in question protects, even partly, a moral right. Green then develops this argument, showing that a moral right relates to an interest which justifies a duty of protection. The vast majority of writers surveyed claim strongly that the right to speak a minority language is an interest worthy of protection, requiring state and other institutional duties and appropriate enforcement mechanisms. Green does not ground this moral right on concerns based on the survival of minority languages themselves; instead, he opts for the principle of 'linguistic security,' that is, that one may use a minority language with dignity.

The main exceptions to this trend are those American commentators who argue that assimilation is the key to national unity (Anon. 1992, Lowrey 1992).

3. Source of language rights

A related question asks whether linguistic rights can be regarded as fundamental rights of independent justification, or whether they are derivatively related to other fundamental rights, typically freedom of expression, the prevention of discrimination (discussed below), and the right to equality before the law. Green (1987; 1991) seems to argue for both propositions: that freedom of expression *does* apply to the right to a choice of language, but furthermore, that language rights have an independent moral grounding *per se*. Gilbert (1996) argues that the classification of language rights is not relevant: What is important is that they be respected and enforced. De Varennes (1996) would argue that rights, such as freedom of expression, the right to non-discrimination on the ground of language, and the right of individuals belonging to linguistic minorities to use their language with other members of their group, when properly applied and understood, provide a flexible framework capable of responding to many of the more important demands of individuals, minorities, or linguistic groups.

Certainly, principles such as equal treatment before the law and freedom of expression have implications for language use. However, as Article 27 of the ICCPR (International Covenant on Civil and Political Rights) tends to confirm, minority linguistic rights need separate and distinct guarantees of protection both to ensure their effective implementation and to serve the specific needs of the speakers of minority languages.

4. Positive versus negative rights

Finally, commentators have examined the nature of the measures or guarantees necessary for the effective implementation of minority language rights. Gromacki (1992) outlines the two approaches taken: 1) negative rights, which focus on ensuring freedom from discrimination, and 2) positive rights, which seek to create and implement actively a right to choice of language.

As indicated earlier, respect for linguistic rights developed from tolerance for diversity. It is generally agreed that in order to enforce language rights, speakers of minority languages have the right not to be discriminated against on linguistic grounds. Réaume (1994) and Green (1987) both favor a right to 'linguistic security,' that is, the right to pursue normal processes of language transmission and maintenance without interference. This right to linguistic security implies, in a linguistically heterogeneous society, protecting key spheres of language use in order that the less powerful group has a fair chance to pursue its own good. McDougal, Lasswell and Chen (1976) outline the potentially serious implications of discriminatory treatment because of linguistic choices (see also de Varennes 1996). Respect for this principle is illustrated by the reference to linguistic issues as grounds for discrimination in several prominent international human rights instruments.[1]

Gromacki (1992) also notes that opting for a negative rights regime avoids heavy administrative and financial burdens on the state.

It is further argued, however, that in addition to a negative rights approach, a certain element of positive rights is necessary to ensure an effective regime of linguistic protection (Capotorti 1979, Krag and Yukhneva 1991, Sigler 1983, Thornberry 1991). Green (1987) argues that even mere tolerance must imply a certain degree of positive rights including the corollary public expenditure. Capotorti (1979) argues that the enunciation of linguistic rights would be meaningless without even a minimal commitment to positive action. The opposing argument, that positive linguistic rights would result in discrimination against the majority, is disputed by Fetzer (1993) who argues that such claims avoid the original impetus behind the discrimination and seek to preserve the majority *status quo*. Overall, then, it appears that both positive and negative elements are essential prerequisites to the effective enforcement of minority language rights.

MINORITY LANGUAGE RIGHTS: APPLICATIONS AND INTERPRETATIONS

1. Determining provisions for minority language rights

The right to choice of language will become an effective fundamental right, like other fundamental rights, only to the extent that it is enshrined not simply in higher legal norms, but also in norms with mandatory provisions that identify precisely as possible the holders and the beneficiaries of language rights and language obligations, as well as the legal sanctions that accompany them (Turi 1994). The range of constitutional, legal, and quasi-legal sources to be assessed with regard to any particular policy area is therefore very wide. In order to impose some order, several scholars have chosen to divide such provisions in terms of their relationship to principles of 'territoriality' or 'personality' (McRae 1975). The rationale for such a division has some similarities with the individual/group issue discussed earlier (Nelde, *et al.* 1992), but it can also be seen as a way of distinguishing between situations where the concentration of minority language speakers is high and where the concentration is low. In the first case it becomes feasible to have a policy which applies throughout the territory of the group (i.e., to everyone); in the second, feasible policy options have, perforce, to focus on individuals. However, legal provisions for language rights rarely follow either form to the exclusion of the other. Nelde, Labrie and Williams (1992) argue for the essential need to compromise in most concrete situations. De Varennes (1996) adopts a flexible approach, observing that the practical experience of most states now favors some form of a "sliding-scale model" as a fair and realizable formula. A formula of this type takes into account practical considerations such as the number of speakers of a language; their territorial concentration; the level of public services being sought; the disadvantages, burdens, or benefits that a state's linguistic practice imposes on individuals; and even a state's human and material resources. This model would appear to be the basis, in principle at least, of the language legislation in countries as different as

Canada (Bourhis 1994a), India (Annamalai 1986), Nigeria (Akinnaso 1994), Spain (Siguan 1993), and Australia (Djité 1994).

A second distinction is frequently made between services provided by the state and those provided by the private sector. De Varennes (1996) argues that while a state only has an obligation to act in a non-discriminatory way in the provision of a public service, it now appears to be a generally accepted standard to allow members of a linguistic community to freely carry on such activities on a private basis in their own language. Many commentators feel, however, that this is almost a trivial right if it is not backed up by financial provisions (Riggins 1992).

A third, widely maintained but less clearly defined, distinction is made between policy imperatives in minority language situations in general and those in so-called indigenous language communities. While there is no unanimity on the question, indigenous peoples are increasingly perceived in international and national law as being entitled to 'special considerations' (compared to minority language communities generally) that include the possibility of various degrees of political autonomy and other measures in order to protect and even revitalize their cultures and languages (de Varennes 1996; see also Cantoni 1996, Stavenhagen 1990). The criteria for defining these peoples are, however, by no means agreed, and it is frequently difficult to find valid arguments for admitting some peoples to this category while excluding others (Hannum 1988, Lerner 1992).

2. Provisions for public employment and services

The prohibition of discrimination is of major significance when a state is involved in offering services or any type of advantage or benefit to individuals (de Varennes 1996). In Canada, for example, the province of Ontario enacted the French Language Services Act in 1986, which provides for 1) the use of English and French in the Legislative Assembly, 2) the translation of statutes, and 3) the right to receive services in French from any head or central office of a government institution and from the provincial government offices and agencies in designated areas. The latter provision includes areas where the minority community represents 5,000 persons in urban centers or 10 percent of the population elsewhere (Fortier 1994). A further goal of the Official Languages Act of 1989, this time at the state level, was to create work environments within the federal administration which would allow Francophone civil servants the possibility of a successful career conducted not solely through the medium of English as in the past, but also through the use of the French language (Bourhis 1994b). (By way of contrast, Daoust [1990] presents a comprehensive picture of the situation within the province of Quebec.) Taking these and other cases into account, De Varennes (1996) argues that when authorities at any one of these levels (national, provincial, or local) faces a sufficiently high number of individuals whose primary language is not the official or preferred state language, it would be discriminatory not to provide a level of service appropriate to the relative number of speakers involved.

Since judicial proceedings are conducted as part of a state's structure, they can also be described as a state service or activity. But because of the very serious consequences of criminal proceedings, it is universally recognized that an accused who does not understand the language of proceedings must have the right to the free assistance of an interpreter (de Varennes 1996). In Australia, for example, the regional governments of Victoria and South Australia have enacted legislation entitling non-English speaking persons to an interpreter in court in particular circumstances and in the criminal investigation process. In other jurisdictions, judges have a discretion within common law to regulate the provision and use of interpreters. However, whether or not a person should be entitled to an interpreter is frequently at the discretion of a judge who is likely to be monolingual (Carroll 1994).

3. Provisions for education

Education, and the extent to which an education system develops minority languages, is crucial for minorities. Liberal theorists debate the role of public education in promoting individual freedom, but in what language should public education be provided? The extent to which these rights and opportunities promote someone's freedom depends, at least in part, on whether they are available in their own language (Kymlicka 1995a). How state education systems respond to the languages of minority groups is often a key test of how far the education system and, by inference, the state, responds to the more general needs of minorities (Jones and Warner 1994).

Where a state provides public education, the prohibition against discrimination imposes generally a duty to offer instruction in the languages spoken by its population to a level that roughly corresponds to the number of speakers of a language (de Varennes 1996). However, de Varennes goes on to argue that because of the need to balance the various rights and interests involved, and because of the ultimate aim of attaining factual as well as legal equality, the prohibition of discrimination in public education can never be invoked in an attempt to deprive children the benefits of learning the official or majority language of the state in which they live (Crawford 1991). This 'fair and realistic' approach, of course, sets the legal framework for the variety of educational programs grouped under the general term 'bilingual education,' but such programs are seen by many scholars working in the area as very problematic because of their consequences in practice (e.g., García 1991, Paulston 1988, Sleeter and Grant 1987).

Private schools which use a minority language are viewed as only marginally different. While it is argued (de Varennes 1996) that a state must allow these schools to open and operate freely, public authorities are entitled to impose requirements as to appropriate academic standards, and they may also require that all students attain a reasonable level of proficiency in the official or majority language. (For a more qualified view, see Hastings 1988.) If states provide financial or other resources to private schools, schools using a minority language as medium of instruction should also be entitled to these benefits.

4. Provisions for the media

Media organizations are not socially autonomous entities, but are integrated in larger socio-economic systems. They are affected most obviously by the state through policies of subsidization, regulation, and legislation (Riggins 1992). In the case of public media, such as state owned or operated television, radio, or publications, the prohibition of discrimination in language matters requires that the level and type of these benefits or services be generally available in direct proportion to the number and concentration of speakers of a specific language (de Varennes 1996). However, in practice these criteria can be difficult to establish because of the technical nature of media operations (Piatt 1984, Riggins 1992).

As for private operations, freedom of expression would demand that state authorities not interfere in the language of the media, and if a state provides some form of assistance to private media, it follows that private media operating in a minority language should also be eligible for these resources in a non-discriminatory way (de Varennes 1996). The European Charter for Regional or Minority Languages (1992) adopted an approach which seems to be finding increasing support in national and international legislation. The Charter asks that governments:

> *undertake*, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in the field, and respecting the principle of the independence and autonomy of the media, *to ensure and/or facilitate the provision of at least one radio station* (or radio programme) *and one television channel* (or programme) *in the regional or minority language*, etc. (1992: Clause 11.1). (Italics added by editor.)

ASSESSING THE IMPACT OF LANGUAGE RIGHTS LEGISLATION

Until recently, the scholarly debate over human rights has been dominated by normative theorists seeking to establish arguments for human rights as well as the universal scope of human rights (Cingranelli 1988). Less work has been done in the area of assessing the operation of language rights legislation in practice. It is one thing to legislate for a principle, quite another to demonstrate empirically that the principle is being carried out in practice.

However, evaluative research is now beginning to appear in all the main domains just discussed—in bilingual education (García 1991, Hernández-Chávez 1990, Paulston 1988, Sleeter and Grant 1987), in media (Husband 1986, Riggins 1992, Subervi-Vélez 1986), and in work (Bourhis 1994a, Daoust 1990). Nonetheless, most evaluative research seeks to estimate the composite effects of state action in its totality, and we still await good studies which will isolate and evaluate the impact of rights legislation *per se*. This problem is not, of course, particular to evaluative studies in this field, but is a feature of evaluative research generally (Rossi and Freeman 1989).

CONCLUDING COMMENT

There have been significant theoretical and legislative developments in the area of minority rights and language rights in recent decades. This short survey has tried to identify and note some of the major milestones. But published critical and evaluative research, as distinct from descriptive or polemic works, is still thin on the ground. Very little research addresses the feasibility of official status, or assesses the optimum means of state intervention. In addition to focusing on the language group itself, then, it would seem imperative that the framework in which they have either chosen or are forced to promote the use of their language must also be critically assessed.

In fact, despite the importance of the 'rights' rhetoric as a unifying symbol in political campaigns and arguments, there remains a question of whether the achievement of minority language rights has a significant impact on the form and degree of language inequality. It is not unusual for researchers to describe the effects of language rights legislation as, at best, paradoxical. On the one hand, state interventions of this type can revitalize minority language groups and advance the cause of multicultural politics. On the other hand, the minority is equally likely to become more integrated into national, and majority, culture (Riggins 1992).

Although it has for long been known that speakers of minority languages do not enjoy the same rights as those of majority groups, the significance of and reasons for this inequality are rarely explored. Habermas (1993) speaks of the dialectics between equality *de jure* and equality *de facto*. Equal powers under the law, he argues, grant liberties of choice and action which can be used differently and thus do not *per se* promote the factual equality of treatment among language communities. Factual prerequisites for equal opportunities to make use of equally distributed legal powers must be given. Thus it is no surprise to find the leading voices in more established social movements (such as the feminist movement), who have hitherto focused on demands for equal rights, now turning their attention to the inequalities that continue to exist in social, economic, and political participation (Voet 1996). Can minority language groups long postpone a similar refocusing?

NOTES

1. Article 1[3] of the United Nations Charter, Article 2 of the Universal Declaration on Human Rights, Article 2[1] of the ICCPR, Article 2[2] of the International Covenant on Economic, Social and Cultural Rights, and Article 14 of the European Convention on Human Rights all refer to linguistic issues as grounds for discrimination.

ANNOTATED BIBLIOGRAPHY

Capotorti, F. 1979. *Study on the rights of persons belonging to ethnic, religious and linguistic minorities.* New York: United Nations.

The publication of the Capotorti Report in 1979 marked the culmination of a six year study on minority rights commissioned by the United Nations Sub-Committee on the Prevention of Discrimination and the Protection of Minorities. Basing his commentary on an analysis of submissions from UN Member States, case-studies, and an extensive survey of secondary sources, Capotorti first discussed the theoretical issues relevant to minority rights. Irrespective of whether his definition of the term 'minority' has been adopted, modified, or rejected, it has become the premise upon which most subsequent writings are based, thus confirming the Report's value as a primary reference source almost two decades after its publication. Having traced the historical development of minority rights, Capotorti then examines the specific issues pertaining to ethnic, religious, and linguistic minorities. With respect to the latter group, he explores the use of minority languages in four main contexts: non-official use, official use, the media, and education. While it is evident that some of the approaches adopted by Capotorti may not have survived the progression of contemporary theory, the Report raised and analyzed the issues with notable clarity and critical skill. For example, Capotorti emphasized as far as possible the role of education in the maintenance of minority languages, while contemporary theorists tend to focus on language domains outside the classroom. However, Capotorti challenged the role of the courts in the implementation of linguistic rights, focusing instead on the duties of the legislature. An appendix to the Report examines a number of minority issues world-wide.

de Varennes, F. 1996. *Language, minorities and human rights.* The Hague: Martinus Nijhoff Publishers.

This is a very comprehensive and up-to-date survey of legal enactments pertaining to Minority Language Rights and research in legal, social, economic, and political sciences associated with these issues. In an extended discussion, which takes up the majority of the book, the most relevant human rights standards recognized in national and international law are examined in some depth: These include freedom of expression, equality and non-discrimination on the ground of language, and the right of members belonging to a minority to use their language in the community with other members of their group. The book also discusses the application and interpretation of these human rights in the fields of education, public services, private and public media, and naturalization and citizenship. In a range of appendices, extracts from a wide range of international and national constitutions, policy documents, bilateral agreements, etc., are reproduced. Overall, the book attempts to develop a comprehensive analytical frame-

work which is consistent with the individualistic-oriented regime of contemporary human rights.

Dinstein, Y. and M. Tabory (eds.) 1992. *The protection of minorities and human rights.* Dordrecht: Martinus Nijhoff.

This collection of 23 papers was originally given at the International Legal Colloquium on the Protection of Minorities and Human Rights at Tel Aviv University (in 1990). The participants were predominantly from a legal background and the papers deal with a range of general questions concerning minority rights. Only one paper deals specifically with the question of language rights, although several address the issue in passing. It is, nonetheless, a good collection for the applied linguist to consult in order to get an overview of contemporary issues and debates in the wider field of minority rights.

Giordain, H. (ed.) 1992. *Les Minorités en Europe: Droits Linguistiques et Droits de l'Homme.* [Minorities in Europe: Linguistic rights and human rights.] Paris: Éditions Kimé.

This edited collection of 28 papers concentrates on Europe with a heavy emphasis on France (4 papers) and two papers each on Switzerland, Italy, and Spain. There are also papers on Greece, Great Britain, Holland, Former Yugoslavia, Finland, and gypsies in Europe, with only two papers on non-European situations. Apart from the editor's introduction, there are eleven papers dealing with theoretical approaches and more general issues. The appendix contains extracts from various European national and international documents. Although the full affiliation of authors is not given in every case, as a group they would appear to be more varied in disciplinary background than the Skutnabb-Kangas and Phillipson volume below. At least six authors have legal occupations or backgrounds. The book has, therefore, a stronger legal input than is usual in collections of this kind.

Sigler, J. A. 1983. *Minority rights: A comparative analysis.* Westport, CT: Greenwood Press.

Although published over a decade ago, Sigler's contribution to the contemporary debate on minority rights remains valid. Focusing on the principles of group rights and affirmative action, Sigler traces the history of the minority rights debate in a critical manner. He challenges the traditional boundaries of international human rights law, substituting his own analysis where he concludes that existing principles do not serve fully the specific needs of minorities. Sigler does not concentrate on any minority situation or rights enforcement mechanism in particular, dealing instead with the background principles common to all minority issues. It is difficult to ignore his dissatisfaction with the classical nature of minority rights, especially with respect to the general institutional reluctance to grant rights to groups and

collectivities. The text concludes with a brief, if perhaps overly simplistic, survey of world-wide minority issues, and a completely annotated bibliography. Sigler looks forward to what he describes as the reconciliation of minority rights with majority power: Although the debate on minority rights has accelerated somewhat in recent years, Sigler's comments remain poignantly relevant today.

Skutnabb-Kangas, T. and R. Phillipson (eds.) 1994. *Linguistic human rights: Overcoming linguistic discrimination.* Berlin: Mouton de Gruyter.

This is an edited collection of 19 papers, plus general and section introductions by the editors. The papers are divided into three sections: 1) The Scope of Linguistic Human Rights, 2) Country Studies: Towards Empowerment, and 3) Post-Colonial Dilemmas and Struggles. A lengthy appendix includes extracts from selected UN and regional documents covering linguistic human rights, proposals for such documents, and resolutions on language rights. The editors and all of the contributors are well-known for their contributions to studies on language-policy analysis, bilingual and general language education, and the sociology of language. Only one, however, has a background in law and is currently practicing in that capacity. The book is thus authoritative and strong on the details of language policy as it operates, or fails to operate, in a variety of contexts. The geographic coverage of selected examples is wide and takes in North and South America, Australia, New Zealand, Africa, Russia, and Eastern and Northern Europe.

Thornberry, P. 1991. *International law and the rights of minorities.* Oxford: Clarendon Press.

Thornberry surveys and analyzes the principal conceptual aspects of minority rights in international law in an informative and critical manner. The extent to which this work is referred to stands as testimony to his acknowledged expertise in this contentious area of international law. Although the text is not focused directly on linguistic rights alone, it provides the reader with the necessary conceptual background to minority rights law—this knowledge can then be applied to the minority situation in question. As is common to most human rights texts, Thornberry first outlines a comprehensive historical background. The text is then divided into four sections that deal respectively with the rights to existence, identity, and non-discrimination in general, and the rights of indigenous peoples more specifically. A number of appendices which reprint excerpts from relevant international instruments and a substantive bibliography complete the text. Thornberry treats minority linguistic rights as an element of the right to identity, focusing specifically on Article 27 of the United Nations International Covenant on Civil and Political Rights (1976), drawing from, but developing, the principles which were outlined more cautiously by Capotorti over a decade earlier.

Vilfan, V., G. Sandvik and L. Wils (eds.) 1993. *Ethnic groups and language rights.* Aldershot: Dartmouth Publishing Company.

This is the third volume in a series sponsored by the European Science Foundation in the 1980s (*Comparative studies of governments and non-dominant ethnic groups in Europe 1850–1940).* The series generally is of clear relevance, but this volume has been selected because it deals specifically with language rights. The twelve case-studies overlap somewhat with the Giordan book, but Vilfan's selection is much stronger on eastern and northern Europe. The theme of the book focuses on the question of access to various government services in the minority language. Two concluding chapters provide a overview and synthesis.

Weinstein, B. (ed.) 1990. *Language policy and political development.* Norwood, NJ: Ablex.

This volume of 13 papers deliberately sets out to explore areas of mutual concern to political scientists and linguists: It combines "the political scientist's sensitivity to policy making and to elite and interest group behaviour" with "the linguist's in-depth knowledge of language processes." The papers are grouped into three sections: language policy to maintain the status quo; language policy to reform the state and/or society; and language policy to transform the state and/or society. Although the issue of minority language rights is not directly addressed by any author, the collection as a whole makes valuable contributions to the analysis of, and the influence of, different types of language legislation, planning strategies, and policies.

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